IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Writ Petition No. 1414 of 2003 (S/S) **Decided on: April 2, 2007**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Dated 02.04.2007

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for Signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1414 of 2003 (S/S)

Anand Singh Bist
S/o Alam Singh
Lecturer,
Intermediate College Yamkeshwar,
District Pauri Garhwal.

……. Petitioner

Versus

1. Regional Joint Director of Education
   Garhwal Mandal, Pauri Garhwal.
2. District Inspector of Schools,
   Pauri Garhwal.
3. Committee of Management
   Intermediate College Yamkeshwar,
   Pauri Garhwal through its Manager.
4. Manohar Prasad Joshi
   Lecturer (Sanskrit)
   Intermediate College Yamkeshwar,
   District Pauri Garhwal.

……. Respondents

Mr. V.K. Bist, Senior Advocate assisted by Mr. Sushil Vashistha, Advocate for the petitioner.
Mr. N.P. Sah, learned Standing Counsel for the respondent State.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought quashing of the order dated 12.09.2003, 24.09.2003 and 29.10.2003, passed by respondents No. 1, 2 and 3,

respectively, whereby the seniority to respondent No. 4 is given by the authorities over the petitioner.

2) Heard learned counsel for the parties and perused the record.

3) Brief facts of the case are that petitioner was appointed as ad hoc lecturer in Sociology on 01.01.1982 in the Intermediate College, Yamkeshwar, District Pauri Garhwal. A copy of said order of appointment is Annexure -1 to the writ petition. Respondent No. 4 was appointed ad hoc lecturer in Sanskrit in the same College on 10.12.1981 (i.e. before the ad hoc appointment of the petitioner). The petitioner's case is that the services of both petitioner and respondent No. 4 were regularized vide order dated 03.09.1985 (copy Annexure -2 to the writ petition), w.e.f. 12.06.1985. According to the petitioner, the District Inspector of Schools prepared seniority list on 16.06.1988, in which the name of the petitioner was shown over respondent No. 4, as the petitioner was older to respondent No. 4. On 24.09.2003, the District Inspector of Schools sent a letter (copy Annexure -4 to the writ petition) to the Manager of the College enclosing order dated 12.09.2003 (copy Annexure -5 to the writ petition), passed by the Regional Joint Director of Education, Pauri Garhwal, informing that the seniority has been re-fixed, and respondent No. 4 has now been placed above the petitioner. The petitioner made a representation dated 05.11.2003 (copy Annexure -7 to the writ petition) for restoration of his seniority to the Joint Director of Education, but to no avail. Hence, the petition.

5) A Joint counter affidavit has been filed on behalf of respondents No. 1 and 2 in which it is admitted that ad hoc appointment of respondent No. 4 is prior to that of the petitioner. It is also admitted that both of them were given substantive appointment with effect from the same dated i.e. 12.06.1985. It is further stated in the counter affidavit that the inter se seniority between the lecturers is determined under Regulation 3(5) of Regulations framed under the U.P. Intermediate Education Act, 1921.

6) Respondent No. 4 filed his separate counter affidavit in which he admitted having been appointed on ad hoc basis earlier to the petitioner. It is also admitted that the both of them were given substantive appointment from the same date. Claiming that length of ad hoc service of respondent No. 4 was more than that of the petitioner, the seniority list in which the name of the petitioner figured above the respondent No. 4, was corrected on his representation. Defending the impugned seniority list respondent No. 4 has sated that the same is in accordance with law.

7) It is admitted between the parties that respondent No. 4 was appointed on ad hoc prior to the petitioner, and both of them were appointed against the substantive vacancies w.e.f. 12.06.1985 vide order dated 03.09.1985. It is pertinent to mention here that the regularization of appointment of ad hoc teachers is made under Section 16-GG of the U.P. Intermediate Education Act, 1921. As far as the seniority is concerned, the same is governed by Regulation 3 of Chapter II of the Regulations framed under

the U.P. Intermediate Education Act, 1921. Said Regulations reads as under:

"3(1). The Committee of Management of every institution shall cause a seniority list of teacher to be prepared in accordance with the following provisions-

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post;

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age:

(bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted:

Provided that if such length of service is equal, seniority shall be determined on the basis of age.

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service;

(d) ***If a teacher who is placed under suspension is reinstated on his original post, his original seniority in the grade shall not be affected.***

(e) ***Every dispute above the seniority of the teacher shall be referred to the Committee of Management which shall decide the same giving reasons for the decision;***

(f) *mi[k.M ¼M½ d v/khu i.cU/k lfefr d fofu'p; l 0;fFkr dkb v/;kid ,l lk fofu'p; ,l v/;kid dk lfpr fd; tkus d fnukd l 15 fnu d Hkhrj lEcfU/kr {k=h; mi f'k{kk fun'kd dk vihy dj ldrk g] vkj vihy ij lEcfU/kr i{kk dk lquokb dk volj nus d mijkUr mi f'k{kk fun'kd viuk fu.k; dkj.k lfgr nxk] tk vfUre gkxk vkj i.cU/k lfefr }kjk dk;kfUor fd;k tk;xkA*

(g) *;fn ,d xM e dk;rj nk ;k vf/kd v/;kid fdlh ,d gh frfFk ij inkUufr fd, tk;s rk mudh T;"Brk dk vk/kkj ml xM dk lokdky gkxk] ftle o dk;jr Fk] ijUr ;fn lokdky cjkcj g] rk inkUufr dh n'kk e vk;s d vk/kkj ij T;"Brk fu/kkjr dh tk;xhA'*.

(2) The seniority list shall be revised every year and the provisions of Clause (1) shall mutates mutandis apply to such revision.

Sub Clause (b) of aforesaid Regulations 3(1) shows that the seniority of teachers in a grade is required to be determined

on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority is required to be determined on the basis of age. However, said provision is silent as to the fact what would happen if the person senior in age had lesser number of years in his ad hoc service before his services were regularized. Similar controversy appears to have been arisen in ***Sudama Singh Vs. Nath Saran Singh and others; reported in (1988) 1 Supreme Court Cases Pg. 57,*** in which the Apex court held that if two persons were appointed initially on ad hoc basis on two different dates and got substantively appointed together, their seniority is required to be determined directly in accordance with Regulation 3(1)(b) ignoring their length of service in ad hoc capacity. Paragraph 2 of Sudama Singh Vs. Nath Saran Singh and others; reported in (1988) 1 Supreme Court Cases Pg. 57, is reproduced as under:

> *"It is not disputed that unitl Section 16-GG of the Act came into effect the appellant and respondent No. 1 were both functioning on an ad hoc basis as teachers and it was only by virtue of Section 16-GG of the Act that they came to be appointed as teachers in substantive capacity. Section 16-GG of the Act came into effect from April 21, 1977. It provided that the teachers who were working on an ad hoc basis between August 18, 1975 and September 30, 1976 (both dates inclusive) against clear vacancies and possessing prescribed qualifications should 'with effect from the date of commencement of this section' be deemed to have been appointed in a substantive*

capacity provided such teacher had been continuously serving the institution from the date of his appointment up to the commencement of this section. There is no dispute that both the appellant and respondent 1 satisfied the conditions prescribed by Section 16-GG of the Act for regularizing their appointment in a substantive capacity but what is crucial for purposes of this case is the date from which the appellant and respondent 1 should be deemed to be holding their posts in a substantive capacity. Section 16-GG of the Act clearly lays down that any teacher whose services are regularized should deemed to have been appointed in a substantive capacity with effect from the date of the commencement of that section. It does not say that the services of such teachers should be deemed to have been regularized with effect from the date from which they were continuously officiating in the posts in question. The date of commencement of the section in the instant case being April 21, 1977 it should be held that both the appellant and respondent 1, who were by then holding the posts of Lecturers on an ad hoc basis were appointed in a substantive capacity on the same date, i.e. April 21, 1977. The High Court omitted to consider the effect of the words 'with effect from the date of the commencement of this section' in sub-section (1) of Section 16-GG of the Act and also sub-section (2) of that section which provided that every teacher deemed to have been appointment in a substantive

capacity under sub-section (1) should be deemed to be on probation from the date of the commencement of the section. On the question of seniority between the appellant and respondent 1 clause (b) of Regulation 3(1) of the Regulations made under the Act, as already stated, provides that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade and if two or more teachers were so appointed on the same date seniority should be determined on the basis of age. Since, it is admitted that both the appellant and respondent 1 had been appointed in a substantive capacity by virtue of Section 16-GG of the Act they must be deemed to be holding their respective posts in the substantive capacity only from April 21, 1977 on which date Section 16-GG of the Act came into force. Both of them should be deemed to be on probation from April 21, 1977 [vide Section 16-GG(2)]. Any earlier appointment or promotion on an ad hoc basis has no bearing on the question of seniority. The appellant and respondent 1 should be deemed to have been appointment on a substantive basis on the same date for purposes of seniority and, therefore, the appellant, who is older than respondent 1, should be treated as senior to respondent 1 by reason of the second sentence in clause (b) of Regulation 3(1) of the Regulations framed under the Act. We are therefore, of the view that the High Court erred in declaring that respondent 1 was senior to the appellant on the basis of the fortuitous

promotion of respondent 1 said to have been made on March 1, 1976. The judgment of the High Court is, therefore, liable to be set aside and the decision of the District Inspector of Schools has to be restored."

9) In view of above law laid down by the Apex court, the petitioner being older to respondent No. 4 and substantive appointee of the same date with one that of respondent No. 4, is entitled to the seniority. As such, the writ petition deserves to be allowed. The writ petition is allowed. Impugned orders dated 12.09.2003, 24.09.2003 and 29.10.2003, to the extent affecting seniority of the petitioner over respondent No. 4, challenged in this petition, are hereby quashed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 2nd April 2007.
H.Negi